

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
VASHON ISLAND SCHOOL )  
DISTRICT NO. 402, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 921

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being the appeal of a \$50 civil penalty for an alleged improper incinerator air emission violation; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 5th day of April, 1976, at Seattle, Washington; and appellant, Vashon Island School District No. 402, appearing through Diane E. Dray, Deputy Prosecuting Attorney for King County and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Chris Smith, Chairman and Walt Woodward and the Board having

1 considered the sworn testimony, exhibits, records and files herein  
2 and arguments of counsel and having entered on the 12th day of  
3 April, 1976, its proposed Findings of Fact, Conclusions of Law and  
4 Order, and the Board having served said proposed Findings, Conclusions  
5 and Order upon all parties herein by certified mail, return receipt  
6 requested and twenty days having elapsed from said service; and

7 The Board having received no exceptions to said proposed  
8 Findings, Conclusions and Order; and the Board being fully advised  
9 in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 12th day  
12 of April, 1976, and incorporated by reference herein and attached  
13 hereto as Exhibit A, are adopted and hereby entered as the Board's  
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 13<sup>th</sup> day of May, 1976.

16 POLLUTION CONTROL HEARINGS BOARD

17   
18 CHRIS SMITH, Chairman

19   
20 WALT WOODWARD, Member  
21

22  
23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 13<sup>th</sup> day of May, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Keith D. McGoffin  
Burkey, Marsico, Roval, McGoffin,  
Turner and Mason  
818 South Yakima Avenue  
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency  
410 West Harrison Street  
Seattle, Washington 98119

Ms. Diane E. Dray  
Deputy Prosecuting Attorney  
W554 King County Courthouse  
Seattle, Washington 98104

Vashon Island Public Schools  
P. O. Box 429  
Vashon, Washington 98070

LARENE BARLIN  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
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AND ORDER

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POLLUTION CONTROL HEARINGS BOARD  
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FINDINGS OF FACT,  
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AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged improper incinerator air emission violation, came before the Pollution Control Hearings Board (Chris Smith, Chairman, and Walt Woodward) as a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on April 5, 1976.

Appellant appeared through Diane E. Dray, Deputy Prosecuting Attorney for King County; respondent through its counsel, Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted. Counsel  
2 made closing arguments.

3 From testimony heard, exhibits examined and arguments considered,  
4 the Pollution Control Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
8 a certified copy of its Regulation I containing respondent's regulations  
9 and amendments thereto.

10 Section 9.05 of Regulation I makes it unlawful to burn refuse in  
11 an incinerator unless it is a multiple chamber device as defined in  
12 Section 1.07 of Regulation I and equipped with emission control  
3 apparatus.

14 Section 3.29 authorizes a civil penalty of not more than \$250 for  
15 any violation of Regulation I.

16 II

17 On September 11, 1975 refuse was burned in an incinerator in  
18 appellant's Burton Elementary School, Vashon Island, King County; the  
19 incinerator is not a multiple chamber device as defined in Section 1.07  
20 of respondent's Regulation I and it does not have emission control  
21 apparatus.

22 The refuse burning, and accompanying opaque smoke plume, was  
23 observed by an inspector on respondent's staff. Pursuant to this  
24 observation, respondent served on appellant Notice of Violation No. 10671,  
25 citing Section 9.05 of respondent's Regulation I, and Notice of Civil  
26 Penalty No. 2531 in the amount of \$50, which is the subject of this appeal.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 III

2 The refuse burning occurred without the knowledge of and contrary  
3 to the instructions of appellant's officials at the school. A thorough  
4 investigation by school officials left them with no information as to  
5 the cause of the burning.

6 IV

7 Since the incident, a number of heavy, seldom-used maintenance tools  
8 have been piled on the lid of the incinerator with the hope by school  
9 officials that this will prevent a recurrence. However, the room in  
10 which the incinerator is located is open to general access and the  
11 incinerator still could be used for the burning of refuse.

12 V

13 Any Conclusion of Law hereinafter recited which is deemed to be  
14 a Finding of Fact is adopted herewith as same.

15 From these Findings, the Pollution Control Hearings Board comes  
16 to these

17 CONCLUSIONS OF LAW

18 I

19 Appellant was in violation of respondent's Regulation I as cited  
20 in Notice of Violation No. 10671.

21 II

22 Notice of Civil Penalty No. 2531, being one-fifth of the maximum  
23 allowable amount, is reasonable.

24 III

25 Compliance with clean air regulations should be the ultimate  
26 objective of enforcement, particularly when an enforcement matter

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 involves the payment of a civil penalty by one taxpayer-supported  
2 governmental agency to another taxpayer-supported governmental agency.

3 In this matter, nothing is gained by invoking actual payment of  
4 the civil penalty. The objective should be the rendering of the offending  
5 incinerator inoperable.

6 IV

7 Any Finding of Fact herein stated which is deemed to be a Conclusion  
8 of Law is adopted herewith as same.

9 Therefore, the Pollution Control Hearings Board issues this

10 ORDER

11 The appeal is denied, but payment of \$50 in Notice of Civil  
12 Penalty No. 2531 is suspended on condition that appellant, in writing,  
13 within one month from the date this Order becomes final, satisfies  
14 respondent that the instant incinerator has been made inoperable.

15 DONE at Lacey, Washington this 12<sup>th</sup> day of April, 1976.

16 POLLUTION CONTROL HEARINGS BOARD

17 Chris Smith  
18 CHRIS SMITH, Chairman

19 Walt Woodward  
20 WALT WOODWARD, Member

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27 FINDINGS OF FACT,  
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